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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Deborah Schick,

10 Plaintiff,

11 v.

12 Resolute Bank, et al.,

13 Defendants.
14

No. CV-19-02218-PHX-DLR

ORDER

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16 Before the Court is the Federal Deposit Insurance Corporation's ("FDIC") motion
17 to dismiss for lack of subject matter jurisdiction. (Doc. 51.) FDIC asserts that the Court
18 lacks subject matter jurisdiction over Plaintiff's complaint because Plaintiff, after FDIC
19 was appointed as Resolute Bank's receiver, failed to exhaust its administrative remedies
20 under the Financial Institutions, Reform, Recover and Enforcement Act of 1989
21 ("FIRREA"). Plaintiff has failed to file a response, which the Court may deem as consent
22 to the granting of the motion. LRCiv. 7.2(i). Despite Plaintiff's non-response, the Court
23 proceeded to review the motion on the merits and finds that it is well-taken.

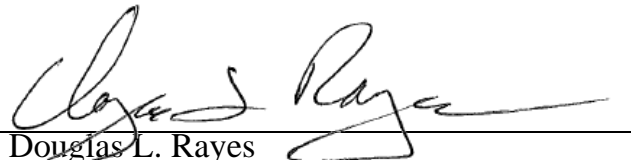
24 "A federal court is presumed to lack jurisdiction in a particular case unless the
25 contrary affirmatively appears." *Stock West, Inc. v. Confederated Tribes of the Colville*
26 *Reservation*, 873 F.3d 1221, 1225 (9th Cir. 1989) (citation omitted). Plaintiff bears the
27 burden of establishing jurisdiction. Plaintiff has not met this burden. The Court lacks
28 jurisdiction over claims against a receiver, such as FDIC, unless a plaintiff first exhausts

1 her FIRREA administrative remedies. 12 U.S.C § 1821(d)(13)(D). FDIC maintains that
2 Plaintiff has not participated in the mandatory administrative claims process and that the
3 January 29, 2020 deadline to do so has passed, resulting in a statutory bar to her claims.
4 Plaintiff makes no argument to the contrary.

5 **IT IS ORDERED** that FDIC's motion to dismiss (Doc. 51) is **GRANTED**.
6 Plaintiff's complaint is dismissed with prejudice and the Clerk of Court is directed to
7 terminate the case.

8 Dated this 18th day of June, 2020.

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Douglas L. Rayes
United States District Judge